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OFFICE OF PETITIONS

In re Application of :
Tong et al. :
Application No. 10/661,748 : LETTER REGARDING
Filed: 09/12/2003 : PATENT TERM ADJUSTMENT
Docket No. 16113-323001/GP-133-00-US :

This is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT" filed December 24, 2008. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **258 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 10, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 260 days. On December 24, 2008, applicants submitted the instant comment. Applicants disclose that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated. Applicants state that it appears that the PTA Calculations in PAIR incorrectly reflects the date of receipt of the Request for Continued Examination (RCE) as December 22, 2006, instead of December 21, 2006. Additionally, applicants

aver that the PTA Calculations in PAIR incorrectly show the date of receipt of the reply to the nonfinal Office action mailed on October 9, 2007, as March 9, 2008, instead of March 10, 2008.

A review of the application history reveals that applicants are correct. The Office incorrectly entered the date of receipt of the RCE in the PTA Calculations as December 22, 2006, instead of December 21, 2006.¹ Thus, the date of December 21, 2006, not December 22, 2006, should have been used for the purpose of calculating patent term adjustment. It is noted that after applicants filed the RCE, they submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on January 23, 2007. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed January 23, 2007, reveals that applicants did not include a statement under 37 CFR 1.704(d).² Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 33 days (not 32 days) pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, December 22, 2006, and ending on the date that the IDS was filed, January 23, 2007. Accordingly, the period of reduction of 32 days will be removed and a period of reduction of 33 days will be entered.

¹ It is noted that the Image File Wrapper for the instant application indicates the date of receipt of the RCE as December 21, 2006.

² Pursuant to 37 CFR § 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Similarly, the Office incorrectly entered the date of receipt of the reply to the nonfinal Office action of October 9, 2007, in the PTA Calculations as March 9, 2008, instead of March 10, 2008.³ Thus, the date of March 10, 2008, not March 9, 2008, should have been used for the purpose of calculating patent term adjustment. In accordance with 37 CFR 1.704(b), the period of adjustment of the term of the patent should have been reduced by 61 days (not 60 days), counting the number of days in the period beginning on the day after the date that is three months after the mailing date of the nonfinal Office action, January 10, 2008, and ending on the date the reply was filed, March 10, 2008. Accordingly, the period of reduction of 60 days will be removed and a period of reduction of 61 days will be entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is 258 days (501 days of Office delay - 243 days of applicant delay).

As this letter was submitted to advise the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

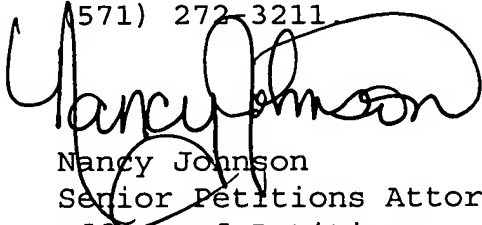
Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

³ It is noted that the Image File Wrapper for the instant application indicates the date of receipt of the reply to the nonfinal Office action as March 10, 2008.

Telephone inquiries specific to this decision should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at

(571) 272-3211

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

PTA Calculations for Application: 10/661748

Application Filing Date:	09/12/2003	PTO Delay (PTO):	501
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	241
Post-Issue Petitions:	0	Total PTA (days):	258
PTO Delay Adjustment:	-2		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
103	02/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		33	
102	02/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	32		
101	02/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		61	
100	02/09/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	60		
87	10/10/2008	MAIL NOTICE OF ALLOWANCE			
86	10/08/2008	ISSUE REVISION COMPLETED			
85	10/08/2008	DOCUMENT VERIFICATION			
84	10/07/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
83	09/30/2008	NOTICE OF ALLOWABILITY			
80	09/25/2008	DATE FORWARDED TO EXAMINER			
79	09/23/2008	AMENDMENT AFTER FINAL REJECTION			
78	06/23/2008	MAIL FINAL REJECTION (PTOL - 326)			
77	06/20/2008	FINAL REJECTION			
76	04/16/2008	DATE FORWARDED TO EXAMINER			
75	03/09/2008	RESPONSE AFTER NON-FINAL ACTION		60	71
74	03/09/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
73	02/20/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
72	02/13/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
71	10/09/2007	MAIL NON-FINAL REJECTION			
70	09/28/2007	NON-FINAL REJECTION			
69	07/18/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
68	08/07/2007	CASE DOCKETED TO EXAMINER IN GAU			
67	07/19/2007	DATE FORWARDED TO EXAMINER			

66	07/18/2007	RESPONSE AFTER NON-FINAL ACTION		9	58
65	07/18/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
64	07/18/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
63	06/15/2007	MAIL-PETITION DECISION - DISMISSED			
62	06/22/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
61	06/22/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
60	04/09/2007	CORRESPONDENCE ADDRESS CHANGE			
59	04/10/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
58	04/09/2007	MAIL NON-FINAL REJECTION			
57	04/02/2007	NON-FINAL REJECTION			
56	01/23/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
55	02/19/2007	PETITION ENTERED			
54	01/23/2007	REFERENCE CAPTURE ON IDS			
53.7	01/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		32	49
53	01/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
52	02/09/2007	DATE FORWARDED TO EXAMINER			
51	12/22/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
50	02/09/2007	DATE FORWARDED TO EXAMINER			
49	12/22/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	02/09/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	12/21/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	12/07/2006	MAIL ADVISORY ACTION (PTOL - 303)			
45	12/06/2006	ADVISORY ACTION (PTOL-303)			
44	12/04/2006	DATE FORWARDED TO EXAMINER			
43	11/21/2006	AMENDMENT AFTER FINAL REJECTION			
42	11/16/2006	MAIL ADVISORY ACTION (PTOL - 303)			
41	11/13/2006	ADVISORY ACTION (PTOL-303)			
40	11/04/2006	DATE FORWARDED TO EXAMINER			
39	10/26/2006	AMENDMENT AFTER FINAL REJECTION			

38	11/03/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
37	10/31/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
36	09/22/2006	MAIL FINAL REJECTION (PTOL - 326)			
35	09/18/2006	FINAL REJECTION			
34	06/23/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	08/08/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	08/08/2006	REFERENCE CAPTURE ON IDS			
31.7	08/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		47	29
31	08/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	07/07/2006	DATE FORWARDED TO EXAMINER			
29	06/22/2006	RESPONSE AFTER NON-FINAL ACTION			
28.7	06/23/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	06/23/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	03/28/2006	MAIL NON-FINAL REJECTION	501		-1
26	03/23/2006	NON-FINAL REJECTION			
25	03/03/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	08/05/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
23	02/26/2006	CASE DOCKETED TO EXAMINER IN GAU			
22	07/18/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	03/03/2005	REFERENCE CAPTURE ON IDS			
20.7	03/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	03/03/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	04/04/2005	CASE DOCKETED TO EXAMINER IN GAU			
18	02/16/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	08/05/2004	REFERENCE CAPTURE ON IDS			
16.7	08/05/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	08/05/2004	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
15	02/16/2005	CASE DOCKETED TO EXAMINER IN GAU			
14	09/13/2004	RESCIND NONPUBLICATION REQUEST FOR PRE GRANT PUBLICATION			
13	06/25/2004	APPLICATION RETURN FROM OIPE			
12	06/25/2004	APPLICATION RETURN TO OIPE			
11	06/25/2004	APPLICATION DISPATCHED FROM OIPE			
10	06/25/2004	APPLICATION IS NOW COMPLETE			
9	06/10/2004	ADDITIONAL APPLICATION FILING FEES		93	7
8	06/10/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	12/09/2003	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	09/12/2003	PGPUBS NONPUB REQUEST			
4	11/25/2003	CASE CLASSIFIED BY OIPE			
3	11/25/2003	CLEARED BY OIPE CSR			
2	11/16/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/12/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page